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July 12, 2007

To: Supervisor Zev Yaroslavsky, Chairman
Supervisor Gloria Molina
Supervisor Yvonne B. Burke
Supervisor Don Knabe
Supervisor Michael D. Antonovich

From: David E. Janssen
Chief Executive Officer

MOTION TO SUPPORT SCA 12 (TORLAKSON AND YEE) RELATED TO STORMWATER AND URBAN RUNOFF MANAGEMENT (ITEM NO. 7, AGENDA OF JULY 17, 2007)

Item No. 7 on the July 17, 2007 Agenda is a motion by Supervisor Yaroslavsky that the Board express its support of SCA 12 to provide an additional resource for local governments to fund stormwater and urban runoff management programs and instruct our County legislative advocates to work vigorously in support of SCA 12.

Proposition 218 of 1996 defined a property-related fee or charge as any levy other than an ad valorem tax, a special tax, or an assessment, imposed by an agency upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property-related service. Before a local government can charge a new property-related fee, or increase an existing one, Proposition 218 requires local officials to: 1) identify the parcels to be charged; 2) calculate the fee for each parcel; 3) notify the parcels' owners in writing about the fees and the hearing; 4) hold a public hearing to consider and count protests; and 5) abandon the fees if a majority of the parcels' owners protest.

New or increased property-related fees require a majority-vote of the affected property owners, or two-thirds registered voter approval, or weighted ballot approval by the

affected property owners. However, this election requirement does not apply to property-related fees for sewer, water, or refuse collection services.

According to the Senate Local Government Committee Analysis, California regulators are pushing counties, cities, and special districts to reduce urban runoff and stormwater discharges. Local officials face the problem of how to fund community-wide efforts in this regard without requiring new development to pay a disproportionate share of those costs. In 2002, an appellate court decision in *Howard Jarvis Taxpayers Association v. City of Salinas* found that charges imposed by the City of Salinas on developed parcels to fund stormwater management were property-related fees, and were not covered by Proposition 218's exemption for "sewer" or "water" services. As a result, those fees require a vote of property owners or registered voters.

SCA 12, as amended on June 18, 2007, exempts new or increased stormwater and urban runoff management fees or charges from the California Constitution's voter approval requirements for property-related fees and charges. This bill would give California voters the opportunity to reverse the Salinas decision and carve out a fourth exception to Proposition 218. SCA 12, if approved by a two-thirds vote of the Legislature, would be placed on a future ballot for voter approval.

The Department of Public Works (DPW) indicates that the County of Los Angeles is required to implement a comprehensive Stormwater Quality Management Plan (SQMP) as mandated by State and federal laws. The SQMP contains the six programs designed to reduce the discharge of pollutants into the storm drainage system to the maximum extent practicable. DPW indicates that the costs to implement the new National Pollutant Discharge Elimination System (NPDES) Municipal Stormwater Permit and new Total Maximum Daily Loads (TMDL) requirements cannot be met solely from the Flood Control District budget.

In addition, DPW indicates that the implementation of existing requirements and increased regulatory requirements under the Clean Water Act, especially the TMDL requirements, are of Statewide interest. DPW states it is not reasonable to expect all cities within the County to be able to meet the voting requirements of Proposition 218 to impose a fee or charge that would fund programs and projects to meet the Clean Water Act requirements. Counties and cities require more flexibility to meet these mandates. DPW indicates that SCA 12 would assist in providing that flexibility. Therefore, DPW recommends that the County support SCA 12.

On September 13, 2005, your Board approved a recommendation instructing the Chief Administrative Officer, with assistance from the Director of Public Works, County Counsel and other appropriate County departments to report to the Board with recommendations on how best to implement a stable and long-term regional funding mechanism that would finance the construction, operation and maintenance of local and regional projects that address water quality and provide other multiple benefits, with

consideration to be given to the issuance of bonds, the establishment of assessment districts or increases in current assessments, and the potential for enacting State legislation to accomplish the foregoing, as well as the establishment of lists of projects to be completed in all parts of the County, and to the costs and timing of any necessary ballot measure. DPW indicates that SCA 12 would address your Board's request regarding implementing a stable and long-term regional funding mechanism.

In addition, the County has existing policy to: 1) "support legislation funding the planning, operation, and maintenance of watershed or multi-use projects"; 2) "support proposals that promote a shared Federal, State and local funding formula to pay for implementation of TMDL and other stormwater requirements"; and 3) "support legislation to allow counties and other public agencies to adopt stormwater fees, upon voter approval, to adequately fund clean water programs."

However, because there is no existing policy to support proposals which provide an exemption from Proposition 218's requirements, a position on SCA 12 is a matter for Board policy determination.

SCA 12 is supported by: League of California Cities; Cities of Brisbane, Burlingame, Chula Vista, Half Moon Bay, Lompoc, Milbrae, Moreno Valley, Pacifica, Roseville, San Mateo, and South San Francisco; Bay Area Stormwater Management Agencies Association; Baykeeper; City/County Association of Governments of San Mateo County; California Coastkeeper Alliance; Friends of the Santa Clara River; Heal the Bay; Inland Empire Waterkeeper; Ocean Conservation Society; San Luis Obispo Coastkeeper; and Santa Barbara Channelkeeper. SCA 12 is opposed by the California Taxpayers Association and Howard Jarvis Taxpayers Association. On July 11, 2007, SCA 12 passed the Senate Elections, Reapportionment, and Constitutional Amendment Committee on a partisan vote of 3 to 2. SCA 12 should be eligible to be taken up on the Senate floor next week.

DEJ:GK
MAL:DD:lm

c: Executive Officer, Board of Supervisors
County Counsel